IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 23561 of 2005(R)

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PETITIONER:

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A. GOVINDAN,
DISTRICT JUDGE (UNDER ORDERS OF DISMISSAL),
SRI. SAI HOUSE, T.C. 55/2215(1), SAI NAGAR,
VISWAMBHARAN ROAD, PAPPANAMCODE,THIRUVANANTHAPURAM

BY ADV. SRI.P.A.CHANDRAN
SRI.A.L.GEORGE

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE HIGH COURT OF KERALA,
THROUGH ITS REGISTRAR (ADMINISTRATION),
HIGH COURT OF KERALA, KOCHI-31.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
GOVERNMENT PLEADER SHRI. BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON 21/08/2007 DELIVERED THE FOLLOWING:

**ANTONY DOMINIC, J.**

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**W.P.(C) No. 23561 OF 2005 R**
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**Dated this the 21st August, 2007**

**J U D G M E N T**

The petitioner was a District Judge. He was issued Ext. R2(a) memo of charges on 14-2-2001. A learned Judge of this Court conducted an enquiry against the petitioner and submitted Ext. P2 report dated 1-7-2002 finding that both the misconducts levelled against the petitioner were proved. The report of the enquiry was accepted and based on the recommendation of the Full Court, by Ext. P6 G.O.(MS) No. 195/2003/Home dated 16-9-2003, the petitioner was dismissed from service with immediate effect as provided in the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960. Subsequently, he filed a non-statutory representation before the Government and that also was rejected by Ext. P8 order. It is in the above background this writ petition was filed by the petitioner seeking the following prayers:

> "(i) To issue a writ of certiorari or any other writ quashing Ext. P6 G.O.(MS) No. 195/03 dated 16-9-2003 and Ext. P8 G.O.(MS)

No. 137/05 dated 16-5-2005;

(ii) To issue a writ of mandamus or any other writ to give effect to the decision of the 2nd respondent as evidenced by Ext. P5 judgment dt. 17-2-2003 of this Honourable court, to compulsorily retire the petitioner under Rule 60(aa) of Kerala Service Rules, Part I, on attainment of 58 years with effect from 27-11-2002;

(iii) to award a compensation of Rs.50 lakhs of Rupees for the for the insults harassments and humiliations caused to the petitioner;"

2. At the time when the case was taken up for hearing the learned counsel appearing for the petitioner did not argue for the reliefs that are prayed for in the petition, but confined his prayer to the eligibility of the petitioner for being paid pension.

3. The basis on which this argument is raised is that in terms of the rules applicable to the petitioner he was to retire at the age of 58 years which he attained on 27-11-2002. According to the learned counsel, in terms of the decision of the Apex Court in ***All India Judges' Association & Others v. Union of India & Others*** {(1993) 4 SCC 288}, particularly paragraph 52(b) thereof, no review for the retention of

the petitioner beyond 58 years was undertaken by the High Court. Therefore it should be deemed that the petitioner has retired on 27-11-2002 when he attained the age of 58 years. According to counsel, if the petitioner had so retired on 27-11-2002, at the time when Ext. P6 order of dismissal was passed he had already ceased to be in service and therefore the said order is incompetent. Counsel would therefore submit that the petitioner should at least be given pensionary benefits for the unblemished service that he has rendered for more than 29 years of judicial work. Counsel also makes reference to Ext. P5 judgment of this Court in O.P. No. 35537 of 2002 in which it is stated that "the petitioner effectively retired from service ....."

4. On the other hand the learned senior counsel Shri. O.V. Radhakrishnan appearing for the 2nd respondent would submit that against Ext. P5 judgment an appeal was carried to before a Division Bench as W.A. No. 694 of 2003 in which this observation of the learned Single Judge relied on by the petitioner has been dealt with in paragraph 9 thereof and the Division

Bench has held that the assumption of the learned Single Judge that the petitioner has been compulsorily retired at the age of 58 is wrong. Referring to paragraph 10 of the Division Bench judgment the learned counsel would submit that though the petitioner had attained the age of 58 years on 27-11-2002, in view of the disciplinary action that was already initiated against the petitioner as early as on 14th February 2001 he was not permitted to retire and was retained in service on payment of salary. Counsel would submit that the petitioner cannot contend that he had retired on 27-11-2002 and therefore the dismissal of the petitioner was legal. It is also submitted that an application for special leave to appeal was filed before the Supreme Court against Ext. R2(c) judgment of the Division Bench and it was dismissed. The petitioner thereafter filed R.P.No.453 of 2003 seeking review of Ext. R2(c). The review petition was also dismissed, as is evident from Ext. R2(d) order.

5. I have considered the submissions of the counsel on both sides. This is a case where on Ext. R2 (a) memo of charges disciplinary proceedings were

initiated against the petitioner. Enquiry was conducted and that culminated in a finding that misconducts alleged against the petitioner were proved and Ext. P2 is the report. In this writ petition or during the arguments there is no challenge against Ext. P2. It is based on Ext. P2, after completing all procedural formalities, Ext. P6 order was issued by the 1st respondent dismissing the petitioner. As stated above, no arguments were addressed on the correctness of the findings in Ext. P2 report. Since the findings in Ext. P2 report have been accepted by the petitioner, his dismissal based on Ext. P2 report also cannot be held to be illegal for any reason. Consequently, if he has lost his pensionary benefits, that also cannot be held to be illegal.

6. The learned counsel contended that in terms of the decision of the Apex Court in (1993) 4 SCC 288 (supra) review was not undertaken before the petitioner attained the age of superannuation. According to the learned counsel as a necessary consequence, the petitioner should be deemed to have retired when he attained the age of 58 years and that Ext. P6 order of

dismissal issued on 16-9-2003 is without jurisdiction. This submission of the learned counsel also cannot be accepted. As I have already noticed the memo of charges was issued to the petitioner on 14-2-2001. It was obviously on account of the pendency of the disciplinary proceedings the suitability of the petitioner to continue beyond 58 years was not reviewed. Regarding his continuance beyond 58 years of age, the contention of the learned counsel cannot be accepted as the issue is now concluded against him by Ext. R2(c) judgment of the Division Bench in W.A. No. 694 of 2003, wherein it has been held as follows:

> "9. Mr. Kumaran submits that while the High Court has recommended the appellant's removal from service, the learned single Judge has proceeded on the assumption that the appellant has been compulsorily retired. This assumption is wrong.
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> 10. The counsel does not appear to be right. No order for the appellant's retirement from service has been passed. At present, the appellant is having a paid holiday. He has lost nothing. The final decision shall depend upon the recommendation made by the High Court and the view taken by the State Government. As at present, the appellant has no cause which may warrant interference by this Court."

This judgment has attained finality with the dismissal

of the special leave application and the review petition.

7. That apart, Ext. R2(c) judgment was rendered on 11-4-2003 and at that time the disciplinary action against the petitioner was continuing. If he had a case that it was without jurisdiction since he had already attained 58 years in November, 2002, this argument should have been raised when O.P. No. 35537 of 2002 or the Writ Appeal filed by the petitioner was heard. This having not raised, it is not open to the petitioner to raise this contention at this belated stage.

Therefore I do not find any merit in the contentions raised by the petitioner and the writ petition will stand dismissed.

**ANTONY DOMINIC**
**JUDGE**

jan/-